



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 56]

नई दिल्ली, सोमवार, अगस्त 29, 2005/भाद्र 7, 1927

No. 56]

NEW DELHI, MONDAY, AUGUST 29, 2005 / BHADRA 7, 1927

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in the Lok Sabha on 29th August, 2005:—

BILL No. 124 OF 2005

A Bill to amend the Juvenile Justice (Care and Protection of Children) Act, 2000.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Juvenile Justice (Care and Protection of Children) Amendment Act, 2005. Short title.

56 of 2000.

2. In the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the principal Act), in the long title, for the words “through various institutions established under this enactment”, the words “and for matters connected therewith or incidental thereto” shall be substituted. Amendment of long title.

3. In section 1 of the principal Act,—

Amendment of section 1.

(i) in the marginal heading, for the words “and commencement”, the words “, commencement and application” shall be substituted;

(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution or sentence of imprisonment of juveniles under any such law.”.

Amendment
of section 2.

4. In section 2 of the principal Act,—

(i) for clause (l), the following clause shall be substituted, namely:—

“(l) “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;”;

(ii) clause (m) shall be omitted.

Omission of
certain
expressions.

5. Throughout the principal Act, the words “local authority”, “or local authority” and “or the local authority”, wherever they occur, shall be omitted.

Insertion of
new section
7A.

6. After section 7 of the principal Act, the following section shall be inserted, namely:—

Procedure to
be followed
when claim of
juvenile is
raised before
any court.

“7A. (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person produced before it was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage even after disposal of the case in terms of the provisions contained in this Act and the rules made thereunder.

(2) If the court finds a person to be a juvenile on the date of commission of the offence, it shall forward the juvenile to the Board.”.

Amendment
of section 10.

7. In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board.”.

Amendment
of section 12.

8. In section 12 of the principal Act, in sub-section (1), after the words “with or without surety”, the words “or placed under the care of any fit institution” shall be inserted.

Amendment
of section 15.

9. In section 15 of the principal Act, in sub-section (1), for clause (g), the following clause shall be substituted, namely:—

“(g) make an order directing the juvenile to be sent to a special home for a period of three years or until he ceases to be a juvenile, whichever is later :

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.”.

Amendment
of section 16.

10. In section 16 of the principal Act, in sub-section (2), for the proviso, the following proviso shall be substituted, namely:—

“Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under section 15.”.

Amendment
of section 20.

11. In section 20 of the principal Act, the following shall be inserted, namely:—

“Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.— In all pending cases in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”.

12. For section 21 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 21.

“21. (1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be published:

Prohibition of publication of name, etc., of juvenile or child in need of care and protection involved in any proceeding under the Act.

Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to one thousand rupees.”

13. In section 32 of the principal Act,—

Amendment of section 32.

(a) in sub-section (1), the following proviso shall be inserted at the end, namely:—

“Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.”;

(b) in sub-section (2), the words “to the police and” shall be omitted.

14. In section 33 of the principal Act,—

Amendment of section 33.

(a) in sub-section (1), the words “or any police officer or special juvenile police unit or the designated police officer” shall be omitted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) After the completion of the inquiry, if, the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may allow the child to remain in the children’s home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.”.

15. In section 39 of the principal Act, for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Amendment of section 39.

‘*Explanation*.— For the purposes of this section “restoration of and protection of a child” means restoration to—

- (a) parents;
- (b) adopted parents;
- (c) foster parents;
- (d) guardian;
- (e) fit person;
- (f) fit institution.’.

16. In section 41 of the principal Act,—

Amendment of section 41.

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Adoption shall be resorted to through such mechanism as may be prescribed for the rehabilitation of the children who are orphaned, abandoned, neglected and abused.”;

(ii) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) The Board may allow a child to be given in adoption—

(a) to a single parent; or

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless parents.”;

(iii) after sub-section (6), the following sub-section shall be inserted, namely:—

“(7) No adoption under this section shall be allowed unless the child and the parents are the citizens of India.”.

Substitution of new section for section 57.

17. For section 57 of the principal Act, the following section shall be substituted, namely:—

Transfer between children's homes, under the Act, and juvenile homes of like nature within the State.

“57. The State Government may direct any child or the juvenile to be transferred from any children's home or special home within the State to any other children's home, special home or institution of a like nature with the prior intimation to the Committee or the Board, as the case may be, and such order shall be deemed to be operative for the competent authority of the area to which the child or the juvenile is sent.”.

Amendment of section 59.

18. In section 59 of the principal Act, in sub-section (2), for the words “for maximum seven days”, the words “for a period generally not exceeding seven days” shall be substituted.

Amendment of section 64.

19. In section 64 of the principal Act, the following shall be inserted, namely:—

“Provided that the State Government, or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile undergoing such sentence, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation.—In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of the provisions contained in this Act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence.”.

Amendment of section 68.

20. In section 68 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.”;

(b) in sub-section (2), after clause (xii), the following clause shall be inserted, namely:—

“(xiii) rehabilitation mechanism to be resorted to in adoption under sub-section (2) of section 41;”;

(c) sub-section (3) shall be re-numbered as sub-section (4) thereof, and before sub-section (4) as so re-numbered, the following sub-section shall be inserted namely:—

“(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

STATEMENT OF OBJECTS AND REASONS

The Juvenile Justice (Care and Protection of Children) Act, 2000 (the Juvenile Justice Act) was brought into force on 1st April, 2001. The Juvenile Justice Act was aimed at providing a juvenile justice system for juveniles in conflict with law and children in need of care and protection by adopting a child friendly approach in the adjudication and disposition of matters in the best interests of children and for their rehabilitation keeping in view the developmental needs of the children.

2. In a public interest litigation (Civil Writ Petition No. 3447 of 2001) certain provisions of the Juvenile Justice Act were challenged before the High Court of Delhi. During the course of hearings, the High Court observed that some of the provisions of the Juvenile Justice Act merited re-consideration. Keeping in view these observations, it was proposed to carry out amendments in sections 32, 33, 56, 57 and 59 of the Juvenile Justice Act. Accordingly, an amendment Bill was introduced in the Lok Sabha on 24-7-2003. Meanwhile, taking cognizance of the said Bill, the High Court of Delhi disposed of the above said Civil Writ Petition on 28-7-2003. The Lok Sabha referred the said Bill to the Parliamentary Standing Committee on Labour and Welfare for examination and report. Before the Standing Committee submitted its report to the Lok Sabha, the Lok Sabha was dissolved and the said Bill lapsed.

3. Thereafter, before re-introducing a fresh amendment Bill the Government considered it necessary to revisit the amendment proposals again along with other suggestions received by the Standing Committee from various experts. In the process, further consultations were held and suggestions/views of all concerned were obtained. Based upon these consultations, it is proposed to make amendments in other provisions of the Juvenile Justice Act in addition to those contained in the earlier Bill. Modifications proposed in the Bill, *inter alia*, intend—

(i) to modify the long title of the Juvenile Justice Act so as to convey a wider scope of rehabilitation of child in need of care and protection or a juvenile in conflict with law under the Act through not only institutional but also non-institutional approach;

(ii) to clarify that the Juvenile Justice Act shall apply to all cases involving detention or criminal prosecution of juveniles under any other law;

(iii) to remove doubts regarding the relevant date in determining the juvenility of a person and applicability of the Juvenile Justice Act;

(iv) exclusion of the local authority from the provisions authorising them to discharge or transfer a child in need of care and protection or a juvenile from the children's home or special home or for sending a juvenile in conflict with law undergoing imprisonment, to a special home or a fit institution;

(v) to have a procedure laid down where claim of juvenility is raised before any court;

(vi) to have a minimum period of twenty-four hours, excluding the time necessary for the journey from the place where the juvenile in conflict with law was apprehended, within which he should be produced before the Board and a similar provision with regard to production of a child before the Child Welfare Committee;

(vii) to provide for alternatives to detention in the observation home to achieve the intention of the Juvenile Justice Act;

(viii) to do away with the association of any police officer from the inquiry process, for the child in need of care and protection as the work is assigned to the Child Welfare Committee and to cover other cases where the child can remain in children/shelter home after completion of enquiry;

(ix) to extend the scope of adoption of a child to childless parents and to limit the same under the Juvenile Justice Act to citizens of India only;

(x) to provide for a flexible period of leave that may be given to child on special occasions like examination, marriage of relatives, death of kith and kin or accident or serious illness of parent or any emergency of the like nature;

(xi) to ensure the applicability of model rules framed by the Central Government in the States/Union territories who have not made their own rules, till the rules are framed in this regard by the respective States/Union territories.

4. This Bill seeks to achieve the above objectives.

MEIRA KUMAR.

NEW DELHI;

The 23rd August, 2005.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Under clause 20 of the Bill, the Central Government may frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under the provision of section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The model rules framed by the Central Government shall apply to the States until the rules in this regard are made by them and while making such rules, so far as is practicable, they will conform to such model rules. The model rules shall be required to be laid before each House of Parliament.

Clause 16 (i) authorises the State Government to frame rules to provide for rehabilitation mechanism to be resorted to in adoption under sub-section (2) of section 41 of the said Act.

The matters with respect to which the said rules may be made are matters of procedure or administrative detail and it may not be possible to provide for them in the amendment Bill itself.

In context of the circumstances as explained above, the delegation of legislative power is of a normal character.

P.D. T. ACHARY,
Secretary-General.